SUPREME COURT, U. S.

In the Supreme Court of the United States

MOTION FILED
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OCTOBER TERM, 1971

No. 71-452

CATHERINE J. HEALY, *et al.*,
Petitioners,
vs.
F. DON JAMES, *et al.*,
Respondents.

Motion of the Associated Students of San Francisco State College and California State College Student Presidents' Association for Leave to File Brief as Amicus Curiae and Brief Amicus Curiae

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CATHERINE J. HEALY, *et al.*,
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F. DON JAMES, *et al.*,
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Motion of the Associated Students of San Francisco State College and California State College Student Presidents' Association for Leave to File Brief as Amicus Curiae

The Associated Students of San Francisco State College (AS), a California non-profit corporation formed in 1944, is the student body organization for the San Francisco State College at San Francisco, California. It is an "auxiliary organization" organized and authorized under California law[1] to represent all of the approximately 20,000 students enrolled at the College.

The California State College Student Presidents' Association (CSCSPA) is an unincorporated, non-profit association, comprised of the student body presidents elected

1. See Calif. Ed. Code §§ 23801, 24054, and 24054.5.

by the student body associations of each of the nineteen California State Colleges.

The California State Colleges are administered by the Trustees of the California State College. (Trustees).[2] On March 1, 1972, the Trustees filed an amicus brief in this case, supporting the Respondents and the majority opinion of the Second Circuit below. *Healy v. James*, 445 F.2d 1122 (2d Cir. 1971).

It is submitted that the AS, representing all the Students at San Francisco State College, and the CSCSPA, representing the presiding officers of the authorized student body organizations of *all* the California State Colleges, have standing to represent the students of the California State Colleges upon the vital Constitutional issues presented in this case. See, *e.g.*, *Flast v. Cohen*, 392 U.S. 83 (1968); *Scenic Hudson Preservation Conference v. FPC*, 354 F.2d 608 (2d Cir. 1965).

For the reasons set forth in their accompanying Amicus Curiae Brief, the AS and CSCSPA seek the reversal of the Second Circuit's decision, and by such a result the reaffirmation by this Court of the important First Amendment rights and privileges of the some 263,000 students of the California State Colleges (as well as other college students throughout the nation).

The AS and CSCSPA recognize the lateness of their motion, which follows somewhat delayed recognition by them of (a) the positions recently taken herein by the Trustees, and (b) the extreme importance of the issues being presented to this Court by the instant case. However, they feel that the vital nature of these issues override time factors, and respectfully make this motion with this in mind. While the attorneys for Petitioners and Respondents have orally consented to the filing of the following Brief, because

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2. See Calif. Ed. Code § 22600.

of the imminence of the oral argument scheduled before this Court, the AS and CSCSPA submit this motion, and the Brief, for filing in the discretion of the Court.

The critical interests of the students represented by the AS and CSCSPA in the present case may be summarized as follows: if the position of the Respondents, and that of the majority of the Second Circuit who considered the appeal below, is upheld, not only will the Petitioners have been denied their Constitutional guarantees of speech and assembly, but such an affirmance, when relied upon as precedent, would significantly deter the free exchange of ideas in every institution of higher learning across the land, including, of course, the California State Colleges. In asking this Court to reverse the decision below, and to uphold the carefully-reasoned dissenting opinion of Judge Smith (445 F.2d at 1132-1135), the AS and CSCSPA wish to emphasize that they in no way condone or support certain of the well-publicized past actions of groups calling themselves "Students for a Democratic Society" on various college campuses and elsewhere, many aspects of which were themselves blatant denials of fundamental First Amendment rights. However, as the Petitioners' Brief makes absolutely clear, the past history of the "SDS" is not the issue at bar.

Dated: March 20, 1972

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In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-452

CATHERINE J. HEALY *et al.*,
Petitioners,

vs.

F. DON JAMES, *et al.*,
Respondents.

Brief of the Asociated Students of San Francisco State College and the California State College Student Presidents' Association, Amicus Curiae

I.

INTEREST OF AMICUS CURIAE

The nineteen California State College campuses situated throughout California are currently attended by over 260,000 students. For those students who are citizens of California and are eighteen years of age or older, the California Legislature has recently bestowed belated recognition of their status as adults[3]; a great majority of all college students are now in this category of citizenship.[4]

3. See, *e.g.*, Ch. 1748, §§ 1-78, Calif. Stats. and Code Amendments, 1971 Reg. Sess. of the California Legislature.

4. See *Soglin v. Kauffman*, 295 F. Supp 978, 988 (W.D. Wisc. 1968), cited in Judge Smith's dissenting opinion below, *Healy v. James, supra* at 1134 n. 3; as well as the Twenty-Sixth Amendment to the United States Constitution.

As both citizens and students enrolled in institutions of higher learning, those represented by the AS and CSCSPA in this Brief have a direct and important interest in the full preservation of the rights and privileges guaranteed to them by the First Amendment: equally because first, they do not lose these rights and privileges by becoming college students, and second, to insure the full and free flow of competing ideas so fundamentally important to the college-level educational process. See *Tilton v. Richardson*, 403 U.S. 672 (1971); *Sweezy v. New Hampshire*, 354 U.S. 234, 262-263 (1957). How this Court decides the present case will dramatically affect the exercise of these fundamental rights upon the campuses of the California State Colleges. If the decision below is affirmed, then, whether by misguided action or upon a false premise, or from personal bias or political belief, college administrators will have been given final legal authority to implement an inviduous form of prior restraint upon these students' First Amendment rights.

The Briefs of all parties and other amicus curiae in varying degrees concede the existence of students' First Amendment rights upon this nation's campuses. The AS and CSCSPA, representing a substantial number of college students, therefore have a substantial interest—representing as they do a constituency to be directly affected by the decision—in this case.

II.

PRELIMINARY STATEMENT OF THE CASE

Because the facts of this case are more than adequately set out elsewhere (Petitioners' Brief, pp. 2-8), to minimize redundancy the AS and CSCSPA only briefly discuss what are considered the most important facts controlling the decision to be made.

Petitioners, all students at Central Connecticut State College (CCSC), a public institution, filed an application for official college recognition of a group they stated would be a "completely independent" chapter of the "Students for a Democratic Society" (SDS). After approval of the application by an intermediate committee, the president of CCSC, Respondent James, denied them official recognition, reportedly fearing the group would adhere "to at least some of the major tenets of the national organization. . . ." (Appendix, p. 15). At the time, Petitioners had committed absolutely no actions to give substance to these fears, nor had they violated any provisions of the "Statement on Rights, Freedoms and Responsibilities of Students" (Pet. for Cert., pp. 24a-32a) previously adopted by CCSC.

Shortly after the president's decision, Petitioners and others were summarily ordered to disband by Respondent Judd, the Acting Dean of Student Affairs, when they met on college premises to discuss James' decision. That order was peacefully obeyed. This proceeding in District Court followed.

It is interesting to note, and, it is submitted, extremely important to the resolution of this case, that nowhere in the record is it stated, or even inferentially suggested, that any of the Petitioners at *any* time prior to or during these proceedings engaged in any misconduct or conduct in any way unlawful or disruptive in nature. Equally important, they had not even *threatened* to engage in such conduct, or to engage in activity which would unlawfully infringe upon campus peace and tranquility.[5]

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5. The most "damning" language contained in the entire record is found in Petitioners' "Statement of Purpose" filed with their application for college recognition:

> "Because it is felt that ideas without parallel in deeds are empty and ephemeral . . . SDS would provide *an agency* for integrating thought with action so as to bring about construc-

Indeed, in a nutshell this is *not* a case where Petitioners can be said, by analogy, to have told Respondent James "we are going to come on campus and 'falsely [shout] fire in a theatre'" (*Schenck v. United States,* 249 U.S. 47 (1919)); but rather by their mere selection of a name with certain meanings to Respondent James, they were subjected to a classic and unjustified "prior restraint" of their First Amendment rights.

III.

SUMMARY OF THE ARGUMENT

This is, in simplest terms, a classic case of an unjustified First Amendment "prior restraint" imposed upon the Petitioners. Accordingly, all the authorities cited by Respondents and the other amicus curiae which deal with the standards applied under the First Amendment in punishing or otherwise restraining those who have *already committed* acts outside the protection of the Amendment, are inapplicable.

On the record in this case, Respondents clearly did not obtain evidence of the substantial nature which was required to show that Petitioners' request for college approval, if granted, presented either clear and present danger of unlawful activity or a material and substantial interference with the requirements of appropriate discipline in the oper-

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tive changes in the university, in American life, and the world" (Appendix, p. 13).

(Does this language necessarily mean unlawful activity, or could it also mean Constitutionally protected "protest" activity (*cf. Tinker v. Des Moines Indep. Comm. School Dist.*, 393 U.S. 503 (1969))? Obviously the statement must be construed completely out of context to support a finding of a "clear and present danger" of unlawful activity.)

Respondents emphasize Petitioner Healey's responses to three questions asked of her by the CCSC Student Affairs Committee (Respondents' Brief, pp. 11-12). Her answers, however, were so equivocal that they lend credence to no-one's argument.

ation of the college. Rather, Respondents transcended Petitioners' First Amendment rights because of a mere undifferentiated fear or apprehension of disturbance, completely unrelated to anything Petitioners had done, or said they intended to do, upon the campus.

Simply by virtue of their positions as college administrators, respondents are not entitled to any exceptions in the application of First Amendment standards upon prior restraints. College students are full citizens, and they do not become disenfranchised from their Constitutional guarantees of free speech and assembly when they enroll at college. In fact, the college campus today is an important arena where the full exercise of First Amendment rights is to be fully accorded and jealously protected, commensurate with the carefully-limited restrictions enunciated by prior decisions of this Court, in order to protect the free interchange of ideas so vital to the educational process.

IV.

ARGUMENT

A. Petitioners as Students Were Denied Important Constitutional Rights to Which They Were Clearly Entitled

It is axiomatic that the First Amendment freedoms enjoy a preferred position in the heirarchy of Constitutional guarantees. *Marsh v. Alabama,* 326 U.S. 501, 509 (1945). Any prior restraints placed on the exercise of freedom of expression bear a heavy presumption of invalidity. *Bantam Books v. Sullivan,* 372 U.S. 58, 70 (1963); see *Near v. Minnesota,* 283 U.S. 697 (1931).

It is equally well-recognized that this nation's colleges and universities are citadels for the future protection and preservation of the Bill of Rights. *Keyishian v. Board of Regents of the University of the State of New York,* 385 U.S. 589, 603 (1967); *Sweezy v. New Hampshire,* 354 U.S.

234, 250 (1957). As aptly stated by Judge Smith in his dissenting opinion below:

> "If support for basic constitutional liberties is weakened on the nation's campuses, they will not long maintain their viability in society as a whole." [*Healy v. James,* 445 F.2d 1122, 1135 (2d Cir. 1971).]

In view of this vital function of the modern campus, it is not a valid argument in support of the decision below, made by several amicus curiae in support of the Respondents, that college administrators should be granted extraordinary powers to *restrict* these basic freedoms, because of current unrest upon many college campuses.

Recently, in *Tinker v. Des Moines Independent Comm. School Dist.,* 393 U.S. 503 (1969), this Court held the First Amendment's prohibition against infringements upon freedom of speech and expression limits the power of school officials to prohibit political protest. As stated by one commentator:

> "By virtue of *Tinker,* schools must tolerate nondistracting expression in class and nondisruptive expression outside of class. Presumably they must also tolerate a minimum level of distraction and disorder which normally flows from the expression of controversial ideas. *Students will be constitutionally protected when they* speak, write, read, distribute leaflets, engage in peaceful demonstrations, *form student organizations,* and conduct meetings and rallies, so long as they do not impair the substantially educational functions of the school. [Comment, *The Supreme Court, 1968 Term,* 83 HARV. L. REV. 7, 160-161 (1969), emphasis added.]

Tinker, in clearly placing students within the ambit of the protections afforded by the First Amendment, dealt with high school and junior high school students. As already underlined by Petitioners (Petitioners' Brief, pp. 12-13,)

and Judge Smith's dissent below (445 F.2d at 1133-1134, n. 3), because of their maturity and legal adulthood, college students should be granted relatively more latitude in the exercise of their freedoms of speech, expression, and assembly. See, also, *Tilton v. Richardson*, 403 U.S. 672 (1971); *Lemmon v. Kurtzman*, 403 U.S. 602 (1971); *Eisner v. Stamford Board of Education*, 440 F.2d 803 (2d Cir. 1971).

B. Particular First Amendment Protection Is Afforded to the Expression of "Political" Ideas

Petitioners' stated purposes for seeking approval of official status on the CCSC campus[6] were clearly primarily "political" in nature, as contrasted to a campus club devoted, for instance, to purely scientific matters, or other less controversial subjects.

The protection of the freedoms of speech and assembly is most vital where speech, such as "political speech", involves current public issues. This is certainly one of the lessons of *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), where this Court stated:

> "[d]ebate on public issues should be uninhibited, robust, and wide open, and . . . may well include vehement, caustic, and sometimes . . . sharp attacks on government and public officials." [*Id.* at 270].

Furthermore, "[p]olitical freedom ends when government can use its powers and its courts to silence its critics. . . ." Kalven, *The New York Times Case: A Note on "The Central Meaning of the First Amendment"*, 1964 SUP. CT. REV., 191, 205.

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6. See Appendix, p. 13: Included are the plan to "provide a *forum* of discussion and self-education for students" to "provide *an agency* for integrating thought with action so as to bring about constructive changes", and to "provide a *coordinating body* for relating the problems of leftist students or other groups."

C. Petitioners Were Subjected to a Classic Case of an Unjustified Prior Restraint of Their First Amendment Rights

In attempting to establish that Petitioners as students are not entitled to the fundamental First Amendment rights discussed above, Respondents, and the other amicus curiae, argue that when placed in the scale of Justice, the need to assure a continuum of campus peace and tranquility outweigh these Constitutional guarantees. However, these arguments, premised as they are on the conclusion that Respondent James, in refusing to grant official college recognition to Petitioners' group, had no alternative, lest campus strife and disorder would surely invade CCSC, are thereby fatally defective.

It is an elementary principle of our system of justice that criminal sanctions cannot be based solely upon "guilt by association." Likewise, Constitutional mandates cannot be similarly avoided or denied. As already pointed out by the Petitioners in their Brief (p. 10):

> Assuming for argument's sake that the record adequately establishes that some SDS groups have employed violence, *Scales v. United States,* 367 U.S. 203 (1961), and *Noto v. United States,* 367 U.S. 290 (1961), make it clear that 'guilt' cannot be imputed to petitioners."

But this is precisely what the Respondents have done in this case.

Before any of the Petitioners committed any wrongful or illegal act whatsoever upon the CCSC campus, by a classic "prior restraint" they were denied their freedoms of speech, association and assembly *solely* because of the alleged activities of *other* student groups calling themselves "Students for a Democratic Society" on other college campuses. Respondents elicited no evidence whatsoever associating or otherwise implicating Petitioners with this activity.

Moreover, this action by Respondents was taken in the face of an express written disclaimer, executed by the Petitioners some two months earlier, that they would be subject to the dictates of any national or parent organization.[7]

Respondent James acted as he did with regard to Petitioners' application not because there was any established threat of "material and substantial interference with the requirements of appropriate discipline in the operation of the school", to say nothing of any "clear and present danger" of violence or illegal disruptions of the educational processes, but rather from an "undifferentiated fear or apprehension of disturbance"; clearly, as recently established by this Court, insufficient to authorize inhibition of Constitutional rights. *Tinker v. Des Moines Comm. School Dist.*, 393 U.S. 503 (1969).

Respondents' action in the present case must not be confused with the standards of conduct applied to college administrators in dealing with student conduct, in the context of students' Constitutional rights, *when the events so regu-*

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7. In a written statement signed by several of the Petitioners for their group on May 12, 1970, *prior* to the initial hearing before Respondent Judd pursuant to Judge Claire's order, Petitioners unequivocally disclaimed any affiliation with, or control by, any other group. That statement affirmed, *inter alia*:

"In order to remove all doubt, we hereby affirm that the proposed organization shall be called Students for a Democratic Society at Central Connecticut College, and it shall have no connection whatsoever to the structure of any existing national organization, or organizations, bearing the name Students for a Democratic Society. Furthermore, the organization shall be unaffiliated with any other organization." (Appendix, pp. 101-102.)

For a discussion of the curious, unexplained, and unjustified rejection of this statement by Respondent Judd, see Petitioners' Brief, p. 22, at nn. 10 and 11.

If Respondents doubted the veracity of this disclaimer, upon proof of its falsity they undoubtedly could have instituted appropriate disciplinary proceedings. But respondents simply never gave Petitioners even the slightest chance to demonstrate they meant what they said in the statement.

lated are taking place or have already occurred. For instance, the cases cited by the Trustees (Brief, pp. 4-6) are not "prior restraint" cases at all, but deal with the due process standards applicable in disciplining student activity; the parameters of the right of college administrators to discipline or curtail activities in fact happening, or clearly threatened, cannot fairly be applied to instances such as reflected in the present case. Otherwise, college students are to be subjected to prior restraints upon their exercise of First Amendment rights based upon the conjectures and subjective fears of individual administrators. The First Amendment is simply not so shallow or selective, nor the college student so disenfranchised.

D. No Procedural Due Process Was Afforded Petitioners to Justify the Prior Restraint Imposed Upon the Exercise of Their First Amendment Rights

Respondents contend that because (in their view) the hearings conducted by Respondent Judd in response to District Judge Claire's order afforded Petitioners full procedural due process, Petitioners cannot complain of the refusal of Respondent James to grant official CCSC approval to their group as a campus organization. (Respondents' Brief, pp. 20-22).

Implicit in this argument is the assumption that First Amendment rights are subject to diminution before any activity at all if, in exchange, some form of "procedural due process" is granted. This hypothesis is somewhat more clearly enunciated in Judge Timbers' opinion below:

> " We wish to emphasize the narrow ground of our decision as stated. And we especially emphasize that we find it neither necessary nor appropriate, upon this record, to reach the substantive constitutional questions which might have been presented if plaintiffs had availed themselves of the procedural due process to

which Judge Claire ordered they were entitled and which the college administrtion accorded them. [445 F.2d at 1131-1132.]

Thus, the majority of the Second Circuit refused to consider the validity of Petitioners' First Amendment claims on the ground they somehow did not take advantage of a pre-condition to the exercise of those rights, *i.e.*, an administrative hearing by the college officials.

Assuming such a pre-condition was valid, as pointed out in detail in the Petitioners' Brief (p. 6, n. 5), it is certainly by no means clear that Respondent Judd's hearings would qualify as procedural due process of any nature.

But, it is submitted, Judge Smith in his dissenting opinion (445 F.2d at 1134-1135) draws out the true nature of the procedures to be implemented by Respondents under Judge Claire's order: to restrain Petitioners from authorized activity on campus, clearly within the ambit of First Amendment rights, by a hearing conducted *prior to granting or denying final approval* (and thus the performance of any actions themselves by the group in question, that hearing would have to adduce evidence of a "clear and present danger" of illegal activity, or at least evidence that their activity would "materially and substantially disrupt the work and discipline of the school". Students as citizens are entitled to the modern definition of the "clear and present danger" test. E.g., *Brandenburg v. Ohio*, 395 U.S. 444 (1969). Judge Smith also correctly analogizes the exercise of a prior restraint in this case to those instances where colleges attempt in advance to prohibit an on-campus speaker. (*Id.* at 1134, n. 8). The lower federal courts have uniformly overturned such instances of prior restraints. (*Id.*).

Where First Amendment rights are involved, courts cannot indulge the usual deference to the wisdom and judgment

of administrators acting in a quasi-legislative capacity. *Los Angeles Teachers Union, Local 1021, A.F.T. v. Los Angeles City Board of Education,* 71 C.2d 551, 557 (1969).

Therefore, in the context of the prohibition of the exercise of First Amendment rights as a prior restraint, the college's investigation and hearing clearly carries with it the burden *upon the college* (who sought to impose the restraint) to establish, by substantial evidence, there was a clear and present danger of conduct outside the protection of the First Amendment. *Cf. Knight v. State Board of Education,* 200 F.Supp. 174 (M.D. Tenn. 1961). As pointed out *in extensio* in Petitioners' Brief, Respondents clearly failed to meet that burden.

With the experience of modern campuses it is a form of sophistry to suggest, as Respondents and their supporting amicus curiae do, that Petitioners "as individuals" have not been denied their right, on or off campus, to speak, or their right to organize *off campus*. This argument completely sidesteps the main First Amendment issue here presented: Petitioners collectively, not as individuals, have been denied the right *to assemble* or organize a group *on campus,* where the student constituency is located. The issue is the rights of students on the college campus under the First Amendment, not such rights in the abstract.

E. The Decision in This Case Will Have Far-Reaching Implications Upon Students' Constitutional Rights

As pointedly noted by the Petitioners, "[t]his case gives the Court the opportunity to implant the First Amendment firmly on the college campus" (Brief, p. 15).

Being full citizens, the students of this nation's colleges deserve that opportunity and an affirmance of their First Amendment rights, which a reversal of the decision below would insure.

On the other hand, affirmance of the Second Circuit's majority opinion could have broad and disturbing implications in the area of student activities. Even if narrowly drawn and expressly limited to the facts of this particular case, such a decision would lend authoritative support to college administrators still imbued with the *in loco parentis* approach to the young adults who attend today's colleges, to impose multiple restrictions on student activities based solely upon subjective fears or conclusions as to what students might do.

In lending its approbation to Respondents' arguments, it is submitted, this Court would be telling college administrators they could indulge all inferences in favor of campus tranquility, leading to even more concrete examples of prior restraints, with resultant chilling effects upon the free interchange of ideas. But protection of First Amendment rights carries with it, as it always has in this country, the exposure to unpopular thoughts and ideas, and even the danger of disruption and turmoil. The correct solution is to punish those who would abuse their First Amendment rights. *Estaban v. Central Missouri State College,* 415 F.2d 1077 (8th Cir. 1969).

V.

CONCLUSION

For the reasons above, and as set forth in Petitioners' Brief and the dissenting opinion of Judge Smith, the majority decision below should be reversed, and the Respondents should be ordered to recognize Petitioners' group at the Central Connecticut State College.

Respectfully submitted,

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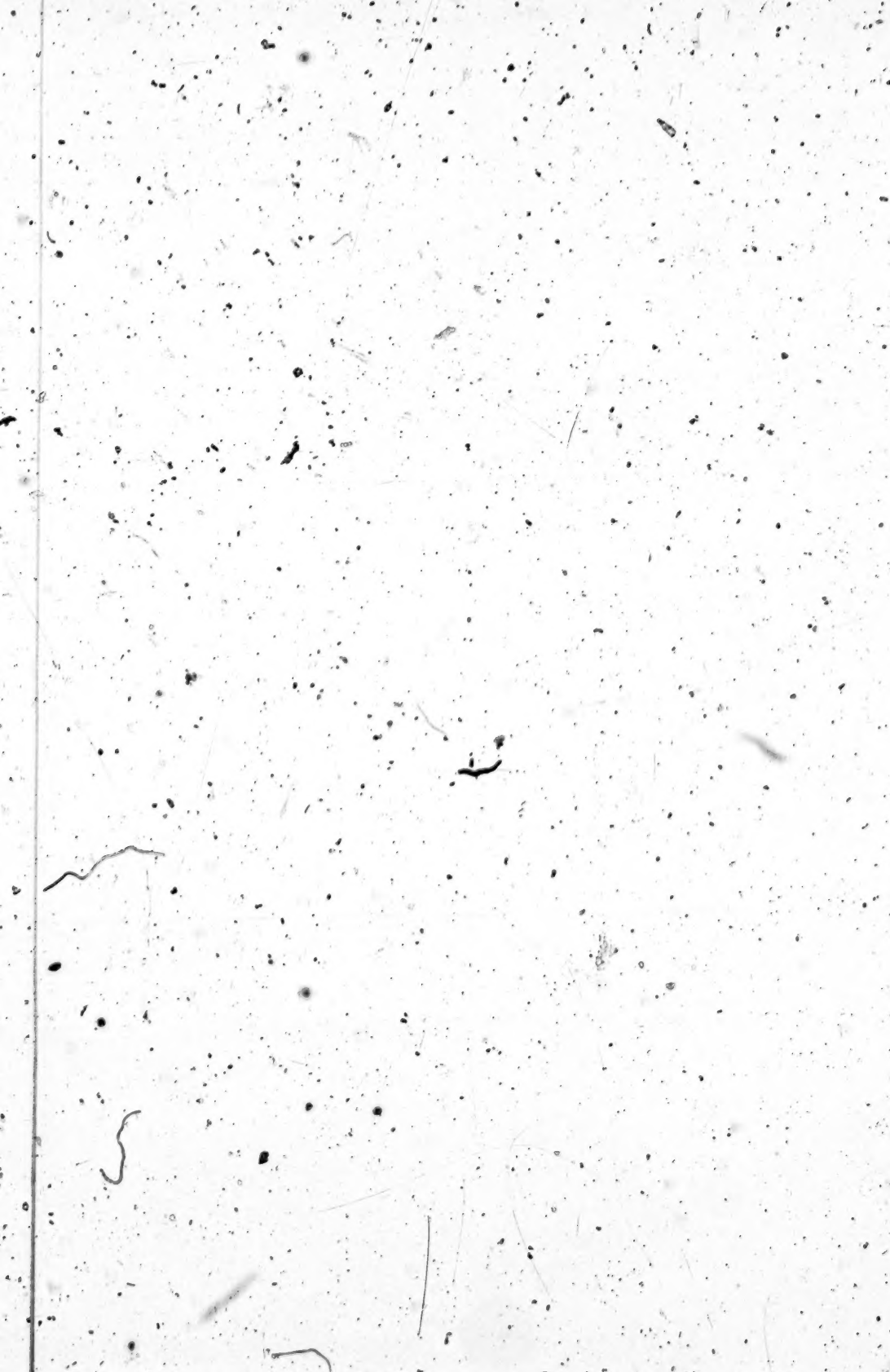

Syllabus

HEALY ET AL. *v.* JAMES ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 71–452. Argued March 28, 1972—Decided June 26, 1972

Petitioners, seeking to form a local chapter of Students for a Democratic Society (SDS) at a state-supported college, were denied recognition as a campus organization. Recognition would have entitled petitioners to use campus facilities for meetings and to use of the campus bulletin board and school newspaper. The college president denied recognition because he was not satisfied that petitioners' group was independent of the national SDS, which he concluded has a philosophy of disruption and violence in conflict with the college's declaration of student rights. Petitioners thereupon brought this action for declaratory and injunctive relief. The District Court first ordered a further administrative hearing, after which the president reaffirmed his prior decision. Approving the president's judgment, the District Court held that petitioners had failed to show that they could function free from the national SDS and that the college's refusal to approve the group, which the court found "likely to cause violent acts of disruption," did not violate petitioners' associational rights. The Court of Appeals, purporting not to reach the First Amendment issues, affirmed on the ground that petitioners had failed to avail themselves of the due process accorded to them and to meet their burden of complying with the prevailing standards for recognition. *Held:*

1. The courts erred in (1) discounting the cognizable First Amendment associational interest that petitioners had in furthering their personal beliefs and (2) assuming that the burden was on petitioners to show entitlement to recognition by the college rather than on the college to justify its nonrecognition of the group, once petitioners had made application conformably to college requirements. Pp. 180–185.

2. Insofar as the denial of recognition to petitioners' group was based on an assumed relationship with the national SDS, or was a result of disagreement with the group's philosophy, or was a consequence of a fear of disruption, for which there was no support in the record, the college's decision violated the petitioners' First Amendment rights. A proper basis for nonrecognition might have

been afforded, however, by a showing that the group refused to comply with a rule requiring them to abide by reasonable campus regulations. Since the record is not clear whether the college has such a rule and, if so, whether petitioners intend to observe it, these issues remain to be resolved. Pp. 185–194.

445 F. 2d 1122, reversed and remanded.

POWELL, J., delivered the opinion of the Court, in which BURGER, C. J., and DOUGLAS, BRENNAN, STEWART, WHITE, MARSHALL, and BLACKMUN, JJ., joined. BURGER, C. J., filed a concurring opinion, *post*, p. 195. DOUGLAS, J., filed a separate opinion, *post*, p. 196. REHNQUIST, J., filed a statement concurring in the result, *post*, p. 201.

Melvin L. Wulf argued the cause for petitioners. With him on the brief were *Eugene Z. DuBose, Jr.*, *Alvin Pudlin*, and *Sanford Jay Rosen*.

F. Michael Ahern, Assistant Attorney General of Connecticut, argued the cause for respondents. With him on the brief was *Robert K. Killian*, Attorney General.

Briefs of *amici curiae* urging affirmance were filed by *Evelle J. Younger*, Attorney General of California, and *Donald B. Day*, Deputy Attorney General, for the Board of Trustees of California State Colleges; by *Frank G. Carrington, Jr.*, and *Alan S. Ganz* for Americans for Effective Law Enforcement, Inc.; and by *Morris I. Leibman* and *Philip B. Kurland* for the American Association of Presidents of Independent Colleges and Universities.

MR. JUSTICE POWELL delivered the opinion of the Court.

This case, arising out of a denial by a state college of official recognition to a group of students who desired to form a local chapter of Students for a Democratic Society (SDS), presents this Court with questions requiring the application of well-established First Amendment principles. While the factual background of this

particular case raises these constitutional issues in a manner not heretofore passed on by the Court, and only infrequently presented to lower federal courts, our decision today is governed by existing precedent.

As the case involves delicate issues concerning the academic community, we approach our task with special caution, recognizing the mutual interest of students, faculty members, and administrators in an environment free from disruptive interference with the educational process. We also are mindful of the equally significant interest in the widest latitude for free expression and debate consonant with the maintenance of order. Where these interests appear to compete the First Amendment, made binding on the States by the Fourteenth Amendment, strikes the required balance.

I

We mention briefly at the outset the setting in 1969–1970. A climate of unrest prevailed on many college campuses in this country. There had been widespread civil disobedience on some campuses, accompanied by the seizure of buildings, vandalism, and arson. Some colleges had been shut down altogether, while at others files were looted and manuscripts destroyed. SDS chapters on some of those campuses had been a catalytic force during this period.[1] Although the causes of campus disruption were many and complex, one of the prime consequences of such activities was the denial of the lawful exercise of First Amendment rights to the majority of students by the few. Indeed, many of the most cherished characteristics long associated with institutions of higher learning appeared to be endangered. For-

[1] See Report of the President's Commission on Campus Unrest (1970); Report of the American Bar Association Commission on Campus Government and Student Dissent (1970).

tunately, with the passage of time, a calmer atmosphere and greater maturity now pervade our campuses. Yet, it was in this climate of earlier unrest that this case arose.

Petitioners are students attending Central Connecticut State College (CCSC), a state-supported institution of higher learning. In September 1969 they undertook to organize what they then referred to as a "local chapter" of SDS. Pursuant to procedures established by the College, petitioners filed a request for official recognition as a campus organization with the Student Affairs Committee, a committee composed of four students, three faculty members, and the Dean of Student Affairs. The request specified three purposes for the proposed organization's existence. It would provide "a forum of discussion and self-education for students developing an analysis of American society"; it would serve as "an agency for integrating thought with action so as to bring about constructive changes"; and it would endeavor to provide "a coordinating body for relating the problems of leftist students" with other interested groups on campus and in the community.[2] The Committee, while satisfied that the statement of purposes was clear and unobjectionable on its face, exhibited concern over the relationship between the proposed local group and the National SDS organization. In response to inquiries, representatives of the proposed organization stated that they would not affiliate with any national organization and that their group would remain "completely independent."

In response to other questions asked by Committee members concerning SDS' reputation for campus disruption, the applicants made the following statements,

[2] The statement of purposes is set out in full in the opinion dissenting from the decision of the Second Circuit. 445 F. 2d 1122, 1136–1137 (1971).

which proved significant during the later stages of these proceedings:

"Q. How would you respond to issues of violence as other S. D. S. chapters have?

"A. Our action would have to be dependent upon each issue.

"Q. Would you use any means possible?

"A. No I can't say that; would not know until we know what the issues are.

"Q. Could you envision the S. D. S. interrupting a class?

"A. Impossible for me to say."

With this information before it, the Committee requested an additional filing by the applicants, including a formal statement regarding affiliations. The amended application filed in response stated flatly that "CCSC Students for a Democratic Society are not under the dictates of any National organization." [3] At a second hearing before the Student Affairs Committee, the question of relationship with the National organization was raised again. One of the organizers explained that the National SDS was divided into several "factional groups," that the national-local relationship was a loose one, and that the local organization accepted only "certain ideas" but not all of the National organization's aims and philosophies.

By a vote of six to two the Committee ultimately approved the application and recommended to the Pres-

[3] 445 F. 2d, at 1133. During the Committee's consideration of petitioners' application, one of the group's representatives was asked why, if it indeed desired to remain independent, it chose to use a nationally known name. The witness' response was that "the name brings to mind the type of organization we wish to bring across, that is, a left-wing organization which will allow students interested in such to express themselves."

ident of the College, Dr. James, that the organization be accorded official recognition. In approving the application, the majority indicated that its decision was premised on the belief that varying viewpoints should be represented on campus and that since the Young Americans for Freedom, the Young Democrats, the Young Republicans, and the Liberal Party all enjoyed recognized status, a group should be available with which "left wing" students might identify. The majority also noted and relied on the organization's claim of independence. Finally, it admonished the organization that immediate suspension would be considered if the group's activities proved incompatible with the school's policies against interference with the privacy of other students or destruction of property. The two dissenting members based their reservation primarily on the lack of clarity regarding the organization's independence.

Several days later, the President rejected the Committee's recommendation, and issued a statement indicating that petitioners' organization was not to be accorded the benefits of official campus recognition. His accompanying remarks, which are set out in full in the margin,[4] indicate several reasons for his action. He

[4] The President stated:

"Though I have full appreciation for the action of the Student Affairs Committee and the reasons stated in their minutes for the majority vote recommending approval of a local chapter of Students for a Democratic Society, it is my judgment that the statement of purpose to form a local chapter of Students for a Democratic Society carries full and unmistakable adherence to at least some of the major tenets of the national organization, loose and divided though that organization may be. The published aims and philosophy of the Students for a Democratic Society, which include disruption and violence, are contrary to the approved policy (by faculty, students, and administration) of Central Connecticut State College which states:

" 'Students do not have the right to invade the privacy of others, to damage the property of others, to disrupt the regular and es-

found that the organization's philosophy was antithetical to the school's policies,[5] and that the group's independence was doubtful. He concluded that approval should

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sential operation of the college, or to interfere with the rights of others.'

"The further statement on the request for recognition that 'CCSC Students for a Democratic Society are not under the dictates of any National organization' in no way clarifies why if a group intends to follow the established policy of the college, they wish to become a local chapter of an organization which openly repudiates such a policy.'

"Freedom of speech, academic freedom on the campus, the freedom of establishing an open forum for the exchange of ideas, the freedoms outlined in the Statement on Rights, Freedoms, and Responsibilities of Students that 'college students and student organizations shall have the right to examine and discuss all questions of interest to them, to express opinion publicly and privately, and to support causes by orderly means. They may organize public demonstrations and protest gatherings and utilize the right of petition'—these are all precious freedoms that we cherish and are freedoms on which we stand. To approve any organization or individual who joins with an organization which openly repudiates those principles is contrary to those freedoms and to the approved 'Statement on the Rights, Freedoms, and Responsibilities of Students' at Central."

[5] In 1969, CCSC adopted, as have many other colleges and universities, a Statement of Rights, Freedoms, and Responsibilities of Students. This statement, commonly referred to as the "Student Bill of Rights," is printed as an Appendix to the Second Circuit's majority opinion in this case, 445 F. 2d, at 1135–1139. Part V of that statement establishes the standards for approval of campus organizations and imposes several basic limitations on their campus activities:

"A. Care shall be taken in the establishment and organization of campus groups so that the basic rights, freedoms and responsibilities of students will be preserved.

"B. Student organizations shall submit a clear statement of purpose, criteria for membership, rules of procedures and a list of officers as a condition of institutional recognition. They shall not be required to submit a membership list as a condition of institutional recognition.

"C. Membership in campus organizations shall be limited to

not be granted to any group that "openly repudiates" the College's dedication to academic freedom.

Denial of official recognition posed serious problems for the organization's existence and growth. Its members were deprived of the opportunity to place announcements regarding meetings, rallies, or other activities in the student newspaper; they were precluded from using various campus bulletin boards; and—most importantly—nonrecognition barred them from using campus facilities for holding meetings. This latter disability was brought home to petitioners shortly after the President's announcement. Petitioners circulated a notice calling a meeting to discuss what further action should be taken in light of the group's official rejection. The members met at the coffee shop in the Student Center ("Devils' Den") but were disbanded on the President's order since nonrecognized groups were not entitled to use such facilities.[6]

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matriculated students (day or evening) at the college. Membership shall not be restricted by race, religion or nationality. The members shall have sole power to determine organization policy consistent with the regulations of the college.

"D. Each organization is free to choose its own adviser. Advisers to organizations shall advise but not control the organizations and their policies.

"E. College students and student organizations shall have the right to examine and discuss all questions of interest to them, to express opinion publicly and privately, and to support causes by orderly means. They may organize public demonstrations and protest gatherings and utilize the right of petition. Students do not have the right to deprive others of the opportunity to speak or be heard, to invade the privacy of others, to damage the property of others, to disrupt the regular and essential operation of the college, or to interfere with the rights of others."

[6] During the meeting petitioners were approached by two of the College's deans, who served petitioners with a memorandum from the President stating:

"Notice has been received by this office of a meeting of the

Their efforts to gain recognition having proved ultimately unsuccessful, and having been made to feel the burden of nonrecognition, petitioners resorted to the courts. They filed a suit in the United States District Court for the District of Connecticut, seeking declaratory and injunctive relief against the President of the College, other administrators, and the State Board of Trustees. Petitioners' primary complaint centered on the denial of First Amendment rights of expression and association arising from denial of campus recognition. The cause was submitted initially on stipulated facts, and, after a short hearing, the judge ruled that petitioners had been denied procedural due process because the President had based his decision on conclusions regarding the applicant's affiliation which were outside the record before him. The court concluded that if the President wished to act on the basis of material outside the application he must at least provide petitioners a hearing and opportunity to introduce evidence as to their affiliations. 311 F. Supp. 1275, 1279, 1281. While retaining jurisdiction over the case, the District Court ordered respondents to hold a hearing in order to clarify the several ambiguities surrounding the President's decision. One of the matters to be explored was whether the local organization, true to its repeated affirmations, was in fact independent of the National SDS. *Id.*, at 1282. And if the hearing demonstrated that the two were not separable, the respondents were instructed that they might then review the "aims and philosophy" of the National organization. *Ibid.*

'C. C. S. C.-S. D. S. on Thursday—November 6 at 7:00 p. m. at the Devils' Den.'

"Such meeting may not take place in the Devils' Den of the Student Center nor in or on any other property of the college since the C. C. S. C.-S. D. S. is not a duly recognized college organization.

"You are hereby notified by this action to cease and desist from meeting on college property."